

MUTUAL NONDISCLOSURE AGREEMENT

**BETWEEN
TEST DEVICES, INC.
AND**

THIS AGREEMENT made and entered into by and between TEST DEVICES, INC., having a place of business at 571 Main Street, Hudson MA 01749-2341, and _____ having a place of business at _____.

1) **PURPOSE**

This Agreement sets forth the rights and obligations of the parties with respect to the use, handling, protection, and safeguarding of certain Proprietary Information, as defined below, which is disclosed by and between the parties relating to drawings, specifications and process specifications related to certain actual or anticipated undertakings between the parties (the "Subject Matter"). The "Purpose" for which such Proprietary Information disclosed by one party (the "Disclosing Party") may be used by the party receiving the Proprietary Information (the "Receiving Party") is limited to:

- A. *Enabling the Receiving Party to evaluate its interest in pursuing future business activities with the Disclosing Party relating to the Subject Matter, e.g., a teaming agreement between the parties hereto.*
- B. *Enabling the Receiving Party to prepare a proposal to be submitted to the Disclosing Party relating to the Subject Matter and,*
- C. *Enabling the Receiving Party to meet any contractual obligations to Disclosing Party.*

2) **DEFINITION AND IDENTIFICATION**

"Proprietary Information" is defined as technical data and other information (including but not limited to descriptions, drawings, compositions, business and financial information, and computer software) in any form, which is related to the Subject Matter, and which is identified in some manner as proprietary by the Disclosing Party in accordance with the following:

- A. When disclosed in writing by the Disclosing Party, the disclosure shall be clearly and conspicuously marked by appropriate stamp or legend as proprietary information of the Disclosing Party;
- B. When disclosed orally or visually, the disclosure shall be identified as proprietary information of the Disclosing Party, and within thirty (30) days of the date of disclosure, the Disclosing Party shall summarize the oral or visual disclosure in written form, mark it as proprietary to the Disclosing Party, and deliver a copy of the disclosure in written form to the Receiving Party; and



C. When disclosed in the form of magnetic or optical recording or in any other machine readable form, the information (and any container used to store the disclosure) shall be identified as proprietary information of the Disclosing Party.

3. **TERM AND TERMINATION**

This Agreement shall commence on the last date on which a party executes this Agreement as set forth herein below and shall continue two (2) years thereafter, provided however, that this Agreement may be terminated as to further disclosures by either party at any time by giving thirty (30) days written notice of termination to the other party. Upon any such termination of this Agreement, or upon expiration of such two (2) year period, each party as a Receiving Party shall cease use of all Proprietary Information received from the Disclosing Party, and shall upon request of the Disclosing Party either destroy all copies of such Proprietary Information (including all reports, notes, extracts or summaries thereof) in whatever form or media they may exist, or return all such copies to the Disclosing Party. Notwithstanding such duty to destroy or return, the Receiving Party may retain in its law department files, or the files of its outside legal counsel, one copy of any item of such Proprietary Information only for purposes of defining the Receiving Party's duties under this Agreement.

4. **LIMITATIONS ON USE AND DISCLOSURE**

The Receiving Party shall hold each item of the Disclosing Party's Proprietary Information received hereunder in confidence from the date of the disclosure to the Receiving Party until expiration of a period of five (5) years after the expiration of such two (2) year period described in Section 3 above, or after termination of this Agreement. Prior to such termination of this Agreement, or if none, during such two (2) year period, the Receiving Party shall use such Proprietary Information only to carry out the Purpose of this Agreement and shall disclose such Proprietary Information only to its employees having a need to know with respect to such Purpose.

Proprietary Information shall not be copied or reproduced by the Receiving Party without the express written permission of the Disclosing Party, except for such copies as may be reasonably required to accomplish the Purpose.

Neither party, as a Receiving Party of Proprietary Information disclosed by the Disclosing Party hereunder, shall, without the express prior written consent of the Disclosing Party, use in whole or in part any such Proprietary Information to develop, manufacture or repair any products, or to compete with the Disclosing Party in any manner.

Each party, as a Receiving Party of Proprietary Information disclosed by the Disclosing Party hereunder, shall exercise the same standard of care to protect such Proprietary Information as it uses to protect its own information that is proprietary, but in no case less than reasonable care. In the event of inadvertent disclosure or use of such Proprietary Information, the Receiving Party shall, upon discovery thereof, immediately notify the Disclosing Party of the disclosure, and take all reasonable steps to retrieve such disclosed Proprietary Information together with any copies, notes or correspondence concerning such Proprietary Information contained in the disclosed material and act to prevent any further disclosure or use of such inadvertently disclosed Proprietary Information. Such inadvertent

disclosure or use will not relieve the Receiving Party from its continued adherence to the terms and conditions set forth in this Agreement.

5. **EXCLUSIONS FROM PROTECTION**

This Agreement shall not restrict a Receiving Party's disclosure or use of any specific item of the Disclosing Party's Proprietary Information that is:

- A. the same as information known without restriction on use or disclosure to the Receiving Party at the time of its disclosure, provided that the Receiving Party so demonstrates to the Disclosing Party such knowledge, and further provided that such known information which is proprietary to both parties shall remain proprietary to both parties until such time that either party in its sole discretion discloses such known information to a third party with no limitation on use or further disclosure; or
- B. the same as information developed by the Receiving Party independently of the Disclosing Party's information disclosed hereunder as "Proprietary Information", provided that that the Receiving Party so demonstrates to the Disclosing Party such independent development, and further provided that such independently developed information which is proprietary to both parties shall remain proprietary to both parties until such time that either Party in its sole discretion discloses such independently developed information to a third party with no limitation on use or further disclosure; or
- C. rightfully obtained without restriction by the Receiving Party from a third party who has the right to make such disclosure without breaching an obligation of confidence to the Disclosing Party; or
- D. publicly available other than through the fault of the Receiving Party; or
- E. Released without restriction by the Disclosing Party to anyone.

6. **WARRANTS**

Each party as Disclosing Party warrants that it has the right to disclose to the Receiving Party the Proprietary Information it discloses hereunder for the Purpose. Neither party warrants that the Proprietary Information it discloses hereunder will meet the requirements of the Receiving Party for the Purpose. Neither party as a Disclosing Party assumes any responsibility or liability, either express or implied, under this Agreement for any use or release of the Disclosing Party's Proprietary Information by the Receiving Party or its permitted customers or agents.

7. **NO FORMAL BUSINESS OBLIGATIONS**

This Agreement shall not constitute, create, give effect to, or otherwise imply a joint venture, pooling arrangement, partnership, or formal business organization of any kind, nor shall it constitute, create, give effect to, or otherwise imply an obligation or commitment on the part of any party to submit a proposal or perform a contract with any other party. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both parties. Neither party will be liable to the other party for any of the costs associated with the other party's efforts in connection with this Agreement.



8. **NO RIGHTS GRANTED**

No license or conveyance of any rights from one party to the other party under any discoveries, inventions, patents, trade secrets, copyrights, or other form of intellectual property is granted or implied by the exchange of Proprietary Information between the parties.

9. **TRANSMISSION AND CONTROL POINTS**

The exclusive points of contact with respect to the transmission and receipt of Proprietary Information furnished by either party to the other hereunder shall be as follows:

TEST DEVICES, INC.:

Test Devices, Inc.

(Insert Name of Other Party)

571 Main Street

(Insert Address of Other Party)

Hudson, MA 01749-2341

(Insert Address of Other Party)

Attention: David Woodford

Attention:
(Insert Contact of Other Party)

Either party may change its above point of contact at any time by providing written notification to the other party.

10. **UNITED STATES GOVERNMENT REGULATIONS**

Each party as Receiving Party shall not use or disclose any Proprietary Information received hereunder in any manner contrary to the laws and regulations of the United States of America, or any agency thereof, including but not limited to the Export Administration Regulations of the U.S. Department of Commerce, the International Traffic in Arms Regulations of the U.S. Department of State, and the Industrial Security Manual for Safeguarding Classified Information and the National Industrial Security Program Operating Manual of the Department of Defense.

11. **INJUNCTIVE RELIEF**

Each Party expressly acknowledges that the other Party may be irreparably harmed by unauthorized disclosure of Confidential Information or other breach of this Agreement. Accordingly, in the event of a breach or threatened breach of this Agreement by either Party, the non-breaching Party shall, in addition to any other remedies which may be available to it at law or equity, be entitled to obtain injunctive relief in order to enforce its rights hereunder.



12. **GOVERNING LAW**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, without giving effect to the conflicts of laws provisions of that or any other jurisdiction.

13. **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties, and supersedes any previous written or oral understandings, with respect to the subject matter of this Agreement. Any modification of this Agreement shall be effective only if in writing and executed by the parties.

14. **BINDING UPON SUCCESSOR AND ASSIGNMENT**

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

15. **ENTIRE AGREEMENT**

This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications, agreements and understandings with respect thereto, whether oral, written or in electronic form.

16. **SEVERABILITY**

Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

17. **COUNTERPARTS; FACSIMILE SIGNATURES**

For the convenience of the parties and to facilitate execution, this Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures may be exchanged via facsimile or PDF attachment to an electronic message. Any electronic reproduction of the signature of any party to this Agreement shall be admissible as evidence of the original signature itself in any judicial or administrative proceeding, whether or not the original is in existence.

SIGNATURE PAGE FOLLOWS



IN WITNESS WHEREOF, each Party has caused its authorized representative to duly execute this Agreement.

TEST DEVICES, INC.

By: David Woodford_____

By:

Signature: _____

Signature: _____

Title: President_____

Title:

Date: _____

Date: